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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,893	01/24/2002	Thomas J. Lochtefeld	P-10334-US	1766

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EXAMINER

CHIU, RALEIGH W

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 05/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/056,893	LOCHTEFELD, THOMAS J.
	Examiner Raleigh Chiu	Art Unit 3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 27 February 2003 .

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-19 and 41-52 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16, 19, 41-49 and 52 is/are rejected.

7) Claim(s) 17, 18, 50 and 51 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-13, 16 and 41-46 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,401,117 (Lochtefeld) in view of U.S. Patent Number 6,019,547 (Hill).

Regarding claims 1, 3, 41 and 43, Figure 3a of Lochtefeld shows a containerless inclined ride surface 1 and at least one nozzle 17. Lochtefeld further shows a rider 10 but does not show a toy surf-action figure. However, it would have been obvious to one of ordinary skill in the art to miniaturize the Lochtefeld system and adapt it toy-surf-action figures in view of Hill who discloses a wave-forming apparatus for humans in Figure 8c but also discloses that the apparatus can be scaled down to a toy-sized model for simulating surfing a child's

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action figure. See Hill at the bridging paragraph between  
~~columns 25-26.~~  
~~24-25~~

Regarding claims 2 and 42, although Lochtefeld discloses a containerless system, it would have been obvious to one of ordinary skill in the art to provide sidewalls to contain the water within the system as taught by Hill. See Hill at column 10, lines 31-36.

Regarding claims 4 and 44, collection basin 12 serves as the recited drain.

Regarding claims 5 and 45, Figure 4c of Lochtefeld shows nozzle 7 extending substantially across the ride surface width.

Regarding claims 6 and 46, the number of nozzles is not considered to be critical.

Regarding claims 7-9, Figure 3a of Lochtefeld further shows a reservoir 16, a source of water 14a and a recirculating pump.

Regarding claims 10 and 13, in view of the Hill teaching of a scaled-down water toy for children, it would have been obvious to one of ordinary skill in the art to use the most commonly-used nozzled apparatus found within the household to operate the toy.

Regarding claims 11 and 12, Figures 4b and 4c of Lochtefeld show a grate 22 and recovery pool 14.

Regarding claims 16 and 49, since both Lochtefeld and Hill show wave-forming apparatuses where a surfing rider can try to negotiate his way through the waves, it would have been a natural extension of Hill's teaching to provide a mechanism through which a child could control his surf-action figure for better realism.

3. Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lochtefeld and Hill as applied above in view of U.S. Patent Number 4,963,116 (Huber).

Regarding claims 10 and 13, in the alternative, it would have been obvious to one of ordinary skill in the art to provide water through a hose in view of Huber who shows in Figure 1 that it is old and well-known in the art to use such an expedient to provide continuous water under pressure in a child's water toy.

4. Claims 14, 15, 19, 47, 48 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lochtefeld and Hill as applied above in view of U.S. Patent Number 5,947,788 (Derrah).

Regarding claims 14, 15, 47 and 48, Figure 1 of Derrah shows that a child's action figure can take the form of a miniature human figure in a surfing pose and mounted on a miniature surfboard.

Regarding claims 19 and 52, it would have been obvious to one of ordinary skill in the art to control the surfing action

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figure of Lochtefeld as modified above with a radio-controlled transmitter and actuator in view of Derrah who teaches that it is old and well-known in the art to control surfing action figures in such a manner.

***Allowable Subject Matter***

5. Claims 17, 18, 50 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
18 April 2003